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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 31.8.2007.

1. Regular Second Appeal No.4130 of 2005

Gurpal Singh son of Late Shri Ganda Singh son of Hari Singh, resident of B-10, Civil Lines, Opposite Guru Nanak Club, Bathinda.

.... Appellant.

vs

Baljit Singh son of Jagjit Singh son of Hargobind Singh, resident of Street No.6, opposite DAV College, Bibiwala Road, Bathinda and others

.... Respondents.

Present: Mr.Adarsh Jain,Advocate,for the appellant.
Mr.Arun Bansal,Advocate,for respondent no.1.

2. Regular Second Appeal No.286 of 2006

Barinder Singh son of Gurpal Singh,
resident of B-10, Civil Lines, Opposite Guru Nanak Club, Bathinda.

.... Appellant.

vs

Baljit Singh son of Jagjit Singh son of Hargobind Singh, resident of Street No.6, opposite DAV College, Bibiwala Road, Bathinda and others

.... Respondents.

Present: Mr.Arun Jain,Advocate,for the appellant.
Mr.Arun Bansal,Advocate,for respondent no.1.

Before : Hon'ble Mr. Justice R.S.Madan.

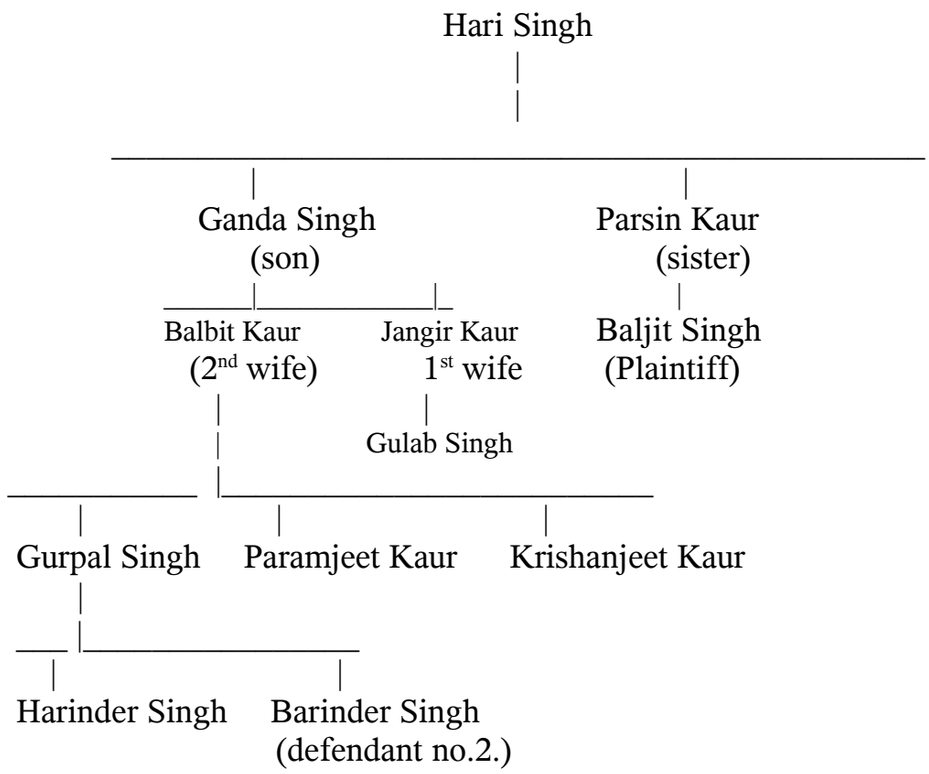
Judgment

R.S.Madan, J.

This order of mine would dispose of RSA No.4130 of 2005, titled as Gurpal Singh vs Baljit Singh and others and RSA No.286 of 2006, titled as Barinder Singh vs Baljit Singh and others, which have arisen from a common judgment and decree dated 29.10.2005, passed by the learned

Additional District Judge, Bathinda, vide which he has upheld the judgment and decree of the trial court dated 15.10.2004 and dismissed the appeal of the appellants.

Before appreciating the facts, the Pedigree Table showing the relationship between the parties is drawn as under:-



The relationship between the parties is not disputed. The facts of the case are also not disputed that the suit land was mortgaged by Ganda Singh with Baljit Singh plaintiff for a sum of Rs.20,000/- on 16.9.1971. Subsequently a sale-deed (Ex.D23) was executed on 30.3.1972, in favour of Baljit Singh plaintiff- respondent by Ganda Singh. According to the plaintiff, he is in possession of the suit property on the basis of registered mortgage-deed dated 16.9.1971 (Ex.P57) and sale-deed dated 30.3.1972 and admission made by Ganda Singh before the revenue authority. Ganda Singh has never challenged the validity of sale-deed during his life time. The

revenue record after the execution of sale-deed in the form of jamabandi and khasra girdawari continued in favour of Baljit Singh till 1998 i.e. on the date of filing of the suit. The controversy arose between the parties after the death of Ganda Singh and his legal heirs wanted inheritance of the suit land in their favour by taking up the plea that the sale-deed executed by Ganda Singh in favour of Baljit Singh plaintiff was only a family settlement and a sham transaction and was without consideration. The appellants- defendants tried to take forcible possession of the suit property from the plaintiffs which necessitated him to file the suit for permanent injunction restraining the defendants- appellants from dispossessing him from the suit land, detailed in the head note of the plaint, illegally, forcibly and also restraining them from interfering in his peaceful possession.

Upon notice, the suit was contested by the defendants-appellants. In his written statement, defendant no.1 Gurpal Singh had taken up the preliminary objection regarding locus standi of the plaintiffs to file the suit, maintainability of the suit, concealment of material facts and also that the same is bad for non-joinder of necessary parties. On merits, it was pleaded that his father Ganda Singh was a big landlord and due to enactment of Punjab Land Reforms Act, 1972 (in short, “the Act”) and to save his land from being declared surplus, he sought advice of his nephew Baljit Singh (plaintiff) who is a Law Graduate. It was also pleaded that to save his land, his father Ganda Singh executed sale deed no.5563 on 30.3.1972 in favour of Baljit Singh and whereas he (Ganda Singh) continued to remain in the cultivating possession of the suit land. It was also pleaded that the sale-deed was executed in favour of Baljit Singh plaintiff on faith and assurance given by him that he will revert back the same as and

when desired by Ganda Singh. It was also alleged that the possession of the suit land was never given to Baljit Singh plaintiff.

In his separate written statement, defendant no.2 Barinder Singh has preferred a counter claim. He has taken the same legal objections which were taken by Gurpal Singh defendant. He also contested the suit on same facts by filing counter claim.

Replication to the written statement as well as reply to the counter-claim was filed by the plaintiff, wherein he denied the averments of the written statements as well as of the counter claim and reiterated the averments pleaded in the plaint.

From the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiffs are owners in possession of the suit land? OPP
2. Whether the plaintiffs are entitled to injunction as prayed for? OPP
3. Whether the sale deed dated 30.3.72 is illegal, null and void qua the rights of the defendants? OPD
4. Whether the defendants are entitled to declaration by way of counter claim? OPD
5. Whether the plaintiffs have got no locus standi to file the present suit? OPD
6. Whether the suit is bad for non joinder of necessary parties? OPD
7. Whether the suit is bad for mis-joinder of necessary parties? OPD
8. Whether the plaint deserves rejection under Order 7 Rule 11 of CPC? OPD
9. Whether the suit is not maintainable in the present form? OPD

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10. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

10A. Whether the defendant No.2 is entitled to the decree on the counter claim filed by him?OPD-3

10B. Whether the counter claim filed by defendant No.2 is maintainable? OPD-2

10C. Whether counter claim is within limitation? OPD

10D. Whether the counter claim is properly valued for the purpose of court fee and jurisdiction? OPD

11. Relief.

Both the parties adduced evidence in support of their claims. After evaluating the evidence brought on record by the parties, the learned trial court answered all the issues in favour of the plaintiffs, dismissed the counter-claim and decreed the suit of the plaintiffs with costs and permanent injunction was granted restraining the defendants-appellants from dispossessing the plaintiffs from the suit land illegally, forcibly and also restrained from interfering in his peaceful possession.

Aggrieved by the judgment and decree dated 15.10.2004 passed by the trial court, the defendants-appellants filed two appeals before the learned Additional District Judge, Bathinda. The first appellate court dismissed both the appeals upholding the verdict of the trial court. The defendants-appellants presented these two regular second appeals before this court after suffering two unsuccessful attempts.

I have heard learned counsel for the parties and have also carefully gone through the trial court record.

In the regular second appeals filed by the appellants-defendants, the following substantial question of law is involved:-

"Whether plaintiff Baljit Singh can be granted

injunction in respect of the disputed land on the basis of sale-deed dated 30.3.1972 which according to the appellants- defendants was not to be acted upon because the said sale was a sham transaction and was sufficient to rebut the revenue record?

It is a case where the facts are not disputed between the parties that Ganda Singh, since deceased, mortgaged the suit land with possession in favour of plaintiff- respondent on 16.9.1971 for Rs.20,000/- vide mortgage-deed, Ex.P57. Subsequently, the said land was sold for Rs.45,000/- to the plaintiff- respondent on 30.3.1972. On that basis, mutation no.12587, Ex.P25, was sanctioned in the presence of Ganda Singh. It is also admitted that Ganda Singh executed three sale-deeds but before this court only sale-deed no.5563 dated 30.3.1972 is the subject matter. Plaintiff suffered decree dated 13.1.1988 in favour of Parsin Kaur (mother of plaintiff Baljit Singh). It is also admitted that Ganda Singh never challenged the sale deed and the decree during his life time. It is further admitted case of the parties that mutation in respect of the aforesaid decree was sanctioned by the revenue authorities in the presence of Ganda Singh (now deceased). Besides this, Ganda Singh also gave an affidavit dated 11.6.1976, Ex.P15, before the Collector, Agrarian, vide which he had admitted the sale of land to Baljit Singh plaintiff. Ganda Singh had also appeared before the Collector, Agrarian, on 9.6.1976 as well as on 4.4.1981 and made statements on oath. In both these statements, he had admitted possession of Baljit Singh over suit land. He has also admitted about mortgage deed, Ex.P57 and sale deed Ex.D23.

It is important to note that out of the suit land, 10 Bighas 10 Biswas land was exchanged by the plaintiff in the year 1986 with Paramjit

Kaur, sister of the appellants, and this exchange was also never challenged by any of the parties either during the life time of Ganda Singh or even thereafter. The said land was acquired by the State Government under the Land Acquisition Act and Baljit Singh received the compensation during the life time of Ganda Singh. The appellants have also not challenged the grant of said compensation to plaintiff Baljit Singh.

The other important fact is that appellant Barinder Singh also got exchanged land measuring 45 kanals 6 marlas situated in Dabwali with the land of plaintiff-respondent measuring 28 Bighas 19 Biswas situated in Bathinda, vide exchange-deed dated 19.2.1994, Ex.P6. Learned counsel for the appellants could not point out any reason to exchange the aforesaid land with the land of the plaintiff- respondent in case he (Baljit Singh) was not the owner of the said land. This fact was also admitted by Barinder Singh as DW1.

Learned counsel for the appellants contends that the courts below have not appreciated documents, Exs.D11, D13, and D14. As rightly pointed out by the learned counsel for the respondent that the trial court in para 39 of its judgment has categorically mentioned that, "*Ld. Counsel for defendants laid much stress upon the admissions made by plaintiffs in Ex.D-11 which is a admitted document are binding upon him. To my opinion, even if it is assumed that the sale deed in question was without any consideration as was merely a paper transaction, then also, it could have been challenged by vendor and not by his successors Admittedly Ganda Singh vendor did not challenge it during his life time. Thus, his successors i.e. defendant No.2 cannot derive any benefit out of the Ex.D-11.*"

Learned counsel for the appellants contended that Baljit Singh

plaintiff in his reply to the complaint made against him before the Director, Prosecution and Litigation, Punjab, has admitted that the sale in his name is a "***Gharelu Rakhrakhawa"***. As aforesaid, this admission cannot be taken against him as he made this statement to save himself from the departmental proceedings.

A perusal of Ex.D-13, would show that the same is a decree-sheet in a suit filed by Harinder Singh son of Gurpal Singh appellant against Sita Rani etc. for possession of agricultural land. The said suit was filed through Baljit Singh respondent seeking a relief in favour of Harinder Singh only and appellant Gurpal Singh had never objected to the said decree. As regards, Ex.D14, the same is a Will executed by Smt. Parsin Kaur mother of plaintiff Baljit Singh on 22.9.1989. The said Will was cancelled by Parsin Kaur on 28.1.1998 and the same was also never challenged by the appellants as admitted by appellant Barinder Singh.

Learned counsel for the appellants in support of his argument that if any suit or claim filed by ostensible owner on the basis of sale-deed or title deed in his name prior to coming into force of sub-section 2 of the Benami Transactions (Prohibition) Act, 1988, the real owner cannot be allowed to raise defence based on any right in respect of the property held benami, referred to *R.Rajagopal Reddy (dead) by LRS. And others vs. Padmini Chandrasekharan (dead) by LRS., 1995 (2) Supreme Court Cases 630.* In this authority for the first time it was the question before the Court whether the suit pending before various courts are to be governed retrospectively or prospectively. It was held that the Act will not act retrospective in operation. Learned counsel for the respondent submitted that sale-deed was executed in the year 1972, therefore, the provisions of

the Benami Transactions (Prohibition) Act, 1988, would not have retrospective operation.

Learned counsel for the appellants further contended that Ganda Singh has transferred the suit land as Benami in the name of plaintiff Baljit Singh to save his land from being declared as surplus and later on he has refused to return the same. He referred to *G.Mahalingappa vs. G.M.Savitha* 2005 (4) RCR (Civil) 200, wherein it was held that, "*father was entitled to raise the plea of benami in the written statement and to show and prove that he was the real owner of the suit property and that the respondent was only his benamidar.*"

Learned counsel for the plaintiff- respondent submitted that the arguments of the learned counsel for the appellants have no force for the reasons that after the execution of the sale-deed by Ganda Singh in favour of Baljit Singh plaintiff, which was sold for a consideration of Rs.45,000/-, Ganda Singh also gave an affidavit dated 11.6.1976, Ex.P15, before the Collector, Agrarian, Bathinda, that sale-deed has been duly executed by him and never challenged during his life time. He had also given two statements on oath before the Collector, Agrarian and had admitted execution of mortgage-deed, Ex.P57, and sale-deed, Ex.D23 in favour of Baljit Singh. He also admitted the possession of Baljit Singh plaintiff as the disputed land was under mortgage. Revenue record entries also prove the factum of possession of the plaintiff over the suit land as also the admission of Barinder Singh appellant in the proceedings that he along with his father has never challenged the entries which are in existence from 30.3.1972 to 2.4.1998.

The judgment in *G.Mahalingappa*'s case (supra) cited by the

learned counsel for the appellants, has no applicability to the facts of the present case. In the present case, the executor of the sale-deed dated 30.3.1972 Ganda Singh has never challenged it before any court of law during his life time. He has also admitted the possession of the plaintiff over the suit property, whereas in the cited case the executor has made the statement that the respondent was his benamidar.

Learned counsel for the appellants while contending that if the plaint was filed after 19.5.1988 such a plea of benami to rebut the presumption by the husband/ father to claim that he was the real owner is not prohibited, referred to *Rebti Devi vs. Ram Dutt* 1998 (1) RCR (Civil) 251, wherein the Hon'ble Supreme Court has laid down seven principles to determine whether the transaction is benami. The appellants could have raised the plea of benami transaction prior to 19.5.1988. The appellants have neither filed any suit or any other claim on or before that date. Ganda Singh executor did not challenge the sale-deed dated 30.3.1972 during his life time. He died on 7.3.1997. The appellants also did not raise any issue during his life time that the sale-deed is illegal. They have only raised this issue in their written statements. In the counter claim, appellant Barinder Singh did not raise any plea under the provisions of Benami Transactions (Prohibition) Act.

Learned counsel for the appellants relied upon Ex.D32 which is Nehri Girdawaris to show that Ganda Singh remained in possession of the suit land even after the execution of the sale-deed.

The appellants failed to prove their possession over the disputed land on the basis of khasra girdawaries and now they are trying to establish their possession by way of Nehri girdawaris which cannot be

preferred over the revenue entries. Reference may be made to *Birbal vs. Shanker Dev and others* 2000 (2) PLJ 204, wherein it was held that, "*Nehri Girdawari cannot be preferred over and above revenue record i.e. Khasra Girdawari prepared by revenue authorities in respect of land. No reliance can be placed on Nehri Girdawari entries inconsistent with entries in revenue record and same liable to be ignored".*

Another contention of the learned counsel for the appellants that at the time of execution of sale-deed an endorsement was made by Baljit Singh plaintiff that an oral agreement was made that the suit land would be returned back to Ganda Singh as and when he desired. This contention cannot be substantiated when there is a document in writing relates to the transfer of title of land, ownership of land as well as possession. Then oral evidence cannot be taken into consideration in view of the provisions of the Evidence Act, 1872. In *Hari Chand vs. Raj Kumari* 1997 (2) 369, it was held that once the term of an agreement between the parties is reduced into writing and duly registered, the court cannot look into oral evidence for that purpose. This authority squarely covered the case of the respondent.

Admittedly, the plaintiff-respondent has established the ownership as well as possession over the suit property on the date of filing of suit and any subsequent changes made during the pendency of the suit will not have any effect because the civil court has ceased of the issue and both the courts below have found plaintiff- respondent to be in possession of the suit land. Both the courts have recorded concurrent finding on all the issues in favour of the plaintiff-respondent. The substantial question of law, whether plaintiff Baljit Singh can be granted injunction in respect of the

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disputed land on the basis of sale-deed dated 30.3.1972 which according to the appellants- defendants was not to be acted upon because the said sale was a sham transaction and was sufficient to rebut the revenue record, has been answered accordingly.

No other point was argued by the learned counsel for the parties.

In the result, both the regular second appeals are dismissed.

31.8.2006. (R.S.Madan)
vs. Judge.